IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3493 OF 2007

1. Madan Narsing Chauhan.

2. Mohan Bhila Rathod ... Applicants.

V/s.

The State of Maharashtra. ... Respondent.

P.K.Dhakephalkar, senior counsel with Amol P. Mhatre for the applicants.

S.D.Shinde, A.P.P. for the State.

CORAM: V.C.DAGA, J.

DATED: 29th October 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. The applicants are seeking bail in connection with C.R.No.118/2007 registered with Nandgaon Police Station, district- Nashik for the offences punishable under sections 376(g), 342, 452 of Indian Penal Code and sections 2 and 3 of Domestic Women Violence Act on the basis of complaint lodged by one Parvatibai Magan Chavan.

3. The prosecution case is that the alleged offence committed on 6th March, 2007 at about 2.00 to 2.30 p.m. That applicants- accused called the complainant to their house and forced her to consume alcohol. Thereafter, when the complainant was under influence of alcohol, both applicants- accused took her to her house and taking advantage of her condition committed rape on her. It is further case of the prosecution that the complainant was under influence of alcohol and could gain conscious only on the next day i.e. on 7th March, 2007 when one Leelabai informed her that her grand daughter Sheetal aged 4 years told one Totabai that she had seen the applicants- accused committing rape on the complainant, as such she lodged complaint on 7th March, 2007 with Nandgaon Police Station. On 8th March, 2007, the applicants- accused came to be arrested and since then there are in custody.

4. The entire medical evidence on record, prima facie; does not support the case of the prosecution. The only material, which can be said to be in support of prosecution’s case, is the statement of one minor gild aged 4 years. In my considered view, the said statement alone should not result in denial of bail to the present applicants.

5. In the above view of the matter, I am inclined to grant bail to the applicant, subject to the following conditions:

(a) The applicants, arrested in connection with C.R.No.118/2007 registered with Nandgaon Police Station, district- Nashik shall be enlarged on bail in the sum of Rs.25,000/- each with one or two local sureties to make up the said amount.

(b) The applicants shall report to the concerned Police Station once in a week, i.e. on every Saturday between 3.00 to 5.00 p.m. till conclusion of the trial. He shall co-operate with the investigating agency for disposal of the case.

(c) The order of bail will be given effect only after the applicants furnish to the investigating officer the details about their places of residence and addresses where they propose to stay after they are enlarged on bail. The applicant will not change his residential address thereafter till the

conclusion of trial without prior intimation to the investigating officer.

(d) The applicants shall not directly or indirectly, make any inducement or threat or pressurise any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

(e) It is needless to mention that breach of any of the conditions by the applicants shall result in cancellation of bail.

(f) Any observation made in this order shall not be construed as finding or expression on merits of the case at the time of trial.

6. Application stands disposed of accordingly.

JUDGE